

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

v

File No. 124634-001

Physicians Health Plan of Mid-Michigan

Family Care

Respondent

Issued and entered
this 17th day of January 2012
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On November 23, 2011, XXXXX, authorized representative of her minor daughter, XXXXX (the Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner receives health care benefits under a certificate of coverage issued by Physicians Health Plan of Mid-Michigan Family Care (PHP). PHP was notified of the request for external review. On November 28, 2011, PHP furnished the information it used in making its final adverse determination. After a preliminary review of the material submitted, the Commissioner accepted the request for external review on November 30, 2011.

This case involves medical issues. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its report and recommendation on December 15, 2011. A copy of the complete report is being provided to the parties with this Order.

II. FACTUAL BACKGROUND

The Petitioner suffered a sprain of the cruciate ligament of the right knee. After completing four weeks of physical therapy, her physician prescribed an anterior cruciate

ligament (ACL) knee brace to treat her condition. PHP denied coverage for the knee brace, ruling that it was unproven and therefore not a covered benefit.

The Petitioner appealed the denial through PHP's internal grievance process. PHP affirmed its decision and issued a final adverse determination November 14, 2011.

III. ISSUE

Did PHP properly deny coverage for Petitioner's ACL knee brace under the terms of the certificate?

IV. ANALYSIS

Petitioner's Argument

The Petitioner's mother disputes PHP's claims that the knee brace is unproven for the treatment of her daughter's condition. She argues that the ACL knee brace is medically necessary for her daughter's treatment plan so that she may resume physical activities.

Respondent's Argument

In its final adverse determination of November 14, 2011, PHP denied coverage for the knee brace stating:

The original decision to deny your request was upheld because it is unproven for your condition, and therefore, not a covered health service. We based this decision on criteria from Milliman Care Guidelines, a nationally recognized company. . . .The criteria conclude that there is little evidence to support the use of knee braces to prevent ongoing injury.

The Milliman guidelines are in a document entitled, *Knee Braces, Anterior Cruciate Ligament (ACL) Tears* which states that "systematic reviews have concluded that bracing post anterior cruciate ligament reconstruction does not significantly change clinical outcomes."

Commissioner's Review

The question of whether an ACL knee brace is medically necessary for the treatment of Petitioner's condition was presented to an independent medical review organization (IRO) for analysis as required by section 11(6) of the Patient's Right to Independent Review Act. The IRO reviewer is a physician in active practice who is certified by the American Board of Orthopedic Surgery. The IRO reviewer's report includes the following analysis and conclusion:

No medical detail is given as to the history of the patients ACL injury/instability; for example Lockman testing, pivot-shift testing, KT 1000 testing. There are no

bone bruises or injury to secondary restraints noted on the MRI to indicate that this is a serious tear or that it will progress to a complete tear.

The treatment for this condition is PT. PT is recommended over a three (3) to four (4) week period in typically a 4-phase regimen progressing from range of motion with modalities to decrease swelling and increasing this activity to sports specific functional training with plyometric and proprioceptive activities which, after achieved, the patient could then resume competitive sports. The orthopedic community has recognized throughout the past decade that peer-reviewed evidence does not support empiric functional bracing in situations such as this.

* * *

The current standards of care in the community do not support the use of knee braces for ACL and such therapy is currently considered experimental/ investigation and unproven in the medical literature.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO's recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on extensive experience, expertise and professional judgment. The Commissioner can discern no reason why the IRO's recommendation should be rejected in the present case.

The Commissioner finds that PHP's denial as unproven in the treatment of Petitioner's condition is consistent with the terms of its certificate and medical policy.

V. ORDER

The Commissioner upholds Physicians Health Plan of Mid-Michigan Family Care's final adverse determination of November 14, 2011. PHP is not required to provide coverage for the Petitioner's ACL knee brace.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner